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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 684

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 29, 1943.

CERTIORARI GRANTED MARCH 15, 1943.

SUPREME COURT OF THE UNITED STATES

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INDEX.

	Original	Print
Record from D. C. U. S., District of Minnesota	1	1
Stipulation as to record	1	1
Amended complaint	2	2
Answer	8	8
Stipulation of facts	12	11
Stipulation as to amounts of taxes paid on Parcel 7 by Indian Allottee	15	13
Findings of fact and conclusions of law	17	15
Opinion, Sullivan, J.	24	22
Supplement memorandum	32	29
Judgment	32	30
Motion for amended findings of fact and conclusions of law, etc.	36	33
Order denying motion for amended findings of fact and conclusions of law, etc.	44	41
Notice of appeal	45	41
Election as to printing of record	47	42
Clerk's certificate	(omitted in printing)	48

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—5476

Record from D. C. U. S., District of Minnesota—Continued

	Original	Print
Order of U. S. C. C. A., Eighth Circuit, for printing of record and filing of briefs under former rules of court.	49	43
Cross-appellant's designation of record on appeal	50	43
Statement of points relied upon by cross-appellant	51	44
Notice of cross appeal by United States	52	44
Certificate of clerk on mailing of notice of cross-appeal.	53	45
Clerk's certificate (omitted in printing)	54	
Proceedings in U. S. C. C. A., Eighth Circuit	62	46
Order of submission	62	46
Opinion, Woodrough, J.	64	47
Judgment	70	53
Motion for stay of issuance of mandate	71	53
Order staying issuance of mandate	72	54
Clerk's certificate (omitted in printing)	74	
Order granting certiorari	75	55

[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, SIXTH DIVISION.

No. 78

UNITED STATES OF AMERICA, Plaintiff,

vs.

CIVIL

State of Minnesota; County of Mahnomen, a Municipal Corporation; Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen, John Adams, as County Commissioners of said County, and their successors in office; John J. Spaeth as Auditor of said County and his successors in office; Adolph J. Paul as Treasurer of said County and his successors in office; Sigvald Tveit as Register of Deeds of said County and his successors in office; Camilla Hardy as Clerk of Court of said County and her successors in office; and Robert Pearson, Defendants

STIPULATION AS TO CONTENTS OF TRANSCRIPT ON APPEAL—April 27, 1942

It Is Hereby Stipulated by and between the parties to the above entitled action, by and through their respective attorneys, that the following parts of the record, proceedings and evidence shall be included in the record on appeal herein, as follows, to-wit:

1. Amended Complaint.
2. Answer to the Amended Complaint.
3. Stipulation of Facts dated January 8, 1941.
4. Stipulation of Facts dated April 8, 1941.
5. The Findings of Fact, Conclusions of Law and Order for Judgment.
6. The Opinion.
7. The Supplemental Opinion.

[fol. 2] 8. The Judgment.

9. Motion for Amended Findings of Fact, Conclusions of Law and Order for Judgment dated March 10, 1942.

10. Order Denying above motion dated March 28, 1942.
11. The Notice of Appeal with date of filing.
12. This Stipulation.

Dated this 27th day of April, 1942.

United States of America, Plaintiff, by C. U. Landrum, Special Assistant U. S. Attorney, Detroit Lakes, Minnesota. Defendants Above Named, Except State of Minnesota, by J. A. A. Burnquist, Attorney General. Geo. B. Sjoselius, Assistant Attorney General. L. A. Wilson, County Attorney, Mahnomen County, by Geo. B. Sjoselius, Assistant Attorney General, 102 State Capitol, St. Paul, Minnesota.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AMENDED COMPLAINT—Filed November 7, 1940

[fol. 3] [Title omitted]

Victor E. Anderson, United States Attorney for the District of Minnesota, and C. U. Landrum, Special Assistant United States Attorney for the District of Minnesota, for and on behalf of the United States of America, Plaintiff, acting under the authority and direction of the Attorney General of the United States, bring this amended complaint against State of Minnesota; County of Mahnomen, a municipal corporation; Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen and John Adams, as Commissioners of said County and their successors in office; John J. Spaeth as Auditor of said County and his successors in office; Adolph J. Paul as Treasurer of said County and his successors in office; Sigvald Tveit as Register of Deeds of said County and his successors in office; Camilla Hardy as Clerk of the District Court of said County and her successors in office, and Robert Pearson, Defendants, and thereupon complaining say:

I

That the defendant County of Mahnomen is and at all times herein mentioned was a municipal corporation, duly

organized and existing under and by virtue of the laws of the State of Minnesota as a County in said State. That Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen, John Adams, John J. Spaeth, Adolph J. Paul, Sigvald Tveit, Camilla Hardy are citizens of and residents of and are officials of said County of Mahnomen, now holding the official positions designated after their names, respectively, and Robert Pearson is a citizen of and resident of said County of Mahnomen, and that this action is brought against said officials in their official capacity and against Robert Pearson individually.

II

That at all times herein mentioned said plaintiff by reason of the laws and treaties hereinafter referred to has [fol. 4] exercised, through the proper department of its government, sovereign power and authority over certain parcels of land and the taxation thereof for the period of twenty-five years from and after the date of issuance of the trust patents hereinafter referred to; said parcels being described as:

Parcel 1. Lot Seven (7) and Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian.

Parcel 4. Lots One (1) and Two (2), of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 5. Lot One (1) of Section Ten (10), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼); The Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian.

III

That in accordance with the treaties and laws of the United States pertaining to Indians, the plaintiff herein duly executed its trust patents as follows:

[fol. 5] Parcel 1. Lot Seven (7) and the Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Orginal allotment No. 504, issued to Edward Beaulieu, July 21, 1902.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 2520, issued to Susan Lucas, February 6, 1908.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 3016, issued to Zennie Tibbetts or Nun do be zhe keence, January 26, 1911.

Parcel 4. Lots One (1) and Two (2) of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Original Allotment No. 277, issued to Maggie Fairbanks, July 21, 1902.

Parcel 5. Lot One (1) of Section Ten (10), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 174, issued to Maggie Gagnon, February 6, 1908.

Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼); The Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian Minnesota, Additional Allotment No. 213, issued to Susan McDougall, October 12, 1908.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Original Allotment No. 3612, issued to Isabelle Garden, December 13, 1902.

[fol. 6] said trust patents being executed in conformity with the Act of Congress approved February 8, 1887 (24 Stat. 388-9) and the Act of January 14, 1889 (25 Stat. 642), under the terms of which the plaintiff held title to the land above described and embraced by said trust patents for the use and benefit of said Indians or in the case of his or her decease for the sole use of his or her heirs, for a period of twenty-five (25) years from the date of the issuance of said trust patents and that at the expiration of said period would convey the same by patent to said Indians or his or her heirs in fee, discharged of said trust and free of all charge or encumbrance whatsoever.

IV

The plaintiff at all times during said trust period held said parcels of land in trust for the lawful heirs of said allottees under the terms of and subject to the conditions of said trust patents heretofore issued and heretofore referred to.

V

That said parcels of land under the laws of the United States at no time during said trust period were subject to taxation by the State of Minnesota, County of Mahnomen, or any subdivision thereof, and said County and its officials have wrongfully and illegally assessed and levied taxes on said lands, and some of said lands have been sold by said officials for taxes and bid in for the State of Minnesota, and the Auditor of said County of Mahnomen did convey some of said parcels of land to the State of Minnesota for taxes for the year 1926, and did convey parcel No. 7 above

described, to Robert Pearson for taxes for the years 1923 to 1934, inclusive.

VI

That all of the lands described in paragraph II hereof have during said twenty-five (25) year trust period mentioned herein been exempt from taxation by the State of Minnesota and any of the subdivisions thereof, and the assessment and levy of taxes thereon was and is illegal and void. That the sale of said lands for taxes was wrongful and unlawful and the tax deeds heretofore referred to are void insofar as [the] pertain to the parcels of land de- [fol. 7] scribed herein. That the acts of the defendants, severally and collectively, in the premises, are in violation of law, and the files and records of the defendant County of Mahnomen and the defendant officials showing the assessment and levy of said taxes, the non-payment thereof and the sale of said parcels of land to the defendant State of Minnesota for non-payment of said taxes, and all other entries pertaining to the taxation of said lands constitute clouds on the title to said land. That each and every act of the defendants, and each of them, affecting the title of said land, is in contravention of the laws of the United States and constitutes an unlawful interference with the plaintiff and its administration of the affairs of said allottees in the performance of its duties and obligations under the provisions of the trust patent.

VII

Plaintiff further avers that for the reasons recited in this complaint the so-called encumbrances, tax liens and tax deeds hereinbefore described and existing of record against the above described parcels of land, insofar as they affect the same, are wholly void and do not operate to convey at law or in equity any right, title, or interest in or to the said described parcels of land to the defendants herein or any of them, or give them any right to possession of said lands, and should, therefore, be set aside and held for naught by order and decree of this Honorable Court.

Plaintiff Prays Judgment:

1. That the defendants have no right, title or interest in or to said lands or lien thereon;

2. That the said so-called encumbrances, tax liens and tax deeds hereinbefore described as existing against said described parcels of land insofar as they affect the same be set aside and held for naught as being a cloud upon the title of said lands; that all of said taxes be abated and cancelled and that the assessment of said lands and the levy of taxes thereon, the sale thereof for taxes, the issuance of said tax deeds, and all other acts of the defendants and each of them in the premises pertaining to the taxation of said lands and the attachment of the lands be declared illegal and void and for naught held;

[fol. 8] 3. That the files and records of the defendant County and of the officers of the defendant County and the files and records of the defendant State of Minnesota be amended and corrected so as to remove said lands from the tax lists and records during the time set out herein and expunge therefrom all apparent liens, encumbrances and sales for taxes and to clear the title to said lands;

4. That the defendants and each of them forthwith be restrained from assessing or taxing said lands or any part thereof for the twenty-five (25) year period set out herein or making any entry or record in the files or records of the defendant State and/or County in any way affecting the title to said lands or any part thereof;

5. That the Court order and direct the defendant County of Mahnomen to refund any and all monies which have been collected for taxes levied and assessed against the parcels of land described herein during the time covered by the Trust Patents hereinbefore referred to.

6. That this Honorable Court grant such other and further relief in the premises as the circumstances may seem to require and shall be found agreeable to equity and good conscience.

United States of America, by Victor E. Anderson, United States Attorney, District of Minnesota, Saint Paul, Minnesota; by C. U. Landrum, Special Assistant U. S. Attorney, District of Minnesota, Detroit Lakes, Minnesota, Attorneys for the Plaintiff.

[File endorsement omitted.]

In United States District Court

Separate Answer of Defendants, State of Minnesota and County of Mahnomen and Its Officers to Plaintiff's Amended Complaint—Filed January 8, 1941

Come now the defendants, State of Minnesota and County of Mahnomen, a municipal corporation, and its officers above named, and for their joint and separate answer to the amended complaint of the plaintiff herein allege:

[fol. 9]

I

Admit the allegations contained in paragraph I of said amended complaint.

II

That the purpose of this suit as set out in said amended complaint is to enjoin, suspend or restrain the assessment, levy or collection of certain taxes upon premises described in said amended complaint imposed pursuant to the laws of the State of Minnesota; that if any or all of said premises were exempt from taxation or if any or all of said taxes were illegal, a plain, speedy and efficient remedy may be had at law or in equity in the courts of the State of Minnesota or by application to the Board of County Commissioners of the County of Mahnomen, Minnesota and the Commissioner of Taxation of the State of Minnesota in the manner provided by the laws of the State of Minnesota; that by reason of the facts aforesaid the above entitled Court is without jurisdiction to hear and determine this cause by reason of the provisions of Subdivision 1, Section 41, Chapter 2, Title 28, U. S. C. A. 1939 Supplement of the Laws of the United States and these answering defendants respectfully pray that this suit be in all things dismissed.

III

Subject to the foregoing objection to the jurisdiction of the Court and without waiving the same these answering defendants further allege:

(A) With respect to Parcel I described in paragraphs II and III of said amended complaint that Edward Beaulieu, the allottee thereof, being then and there an adult, mixed

blood Indian competent and capable of conveying, did under date of September 26, 1938, sell and convey his said allotment to Eddie and Sidney Stephenson by a warranty deed dated on said day; that thereafter all taxes and tax liens against said premises were voluntarily paid and discharged in full; that thereby the trust claimed by the plaintiff was wholly discharged and neither said allottee or the plaintiff have any further right, title or interest in or to said premises.

[fol. 10] (B) With respect to Parcel 2 described in paragraphs II and III of said amended complaint that the officials of the County of Mahnomen have erroneously and in the mistaken belief that said land was taxable attempted to assess, levy and extend taxes against the same within the twenty-five year trust period and concede that such taxes assessed, levied and extended prior to the year 1933 are void and defendants are ready and willing to cancel and abate the same.

(C) With respect to Parcel 3 described in paragraphs II and III of said amended complaint that M. L. Burns, Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, did heretofore apply in behalf of said allottee to the Auditor and Board of County Commissioners of the County of Mahnomen and the Minnesota Tax Commission for the cancellation and abatement of all taxes assessed and levied against said allotment for the year 1935 and prior years; that said application was duly granted and said taxes thereupon duly cancelled and abated thereby granting all the relief which the plaintiff now seeks.

(D) With respect to Parcel 4 described in paragraphs II and III of said amended complaint that the officials of the County of Mahnomen, Minnesota, have assessed, levied and extended taxes against said premises and allege that at least an undivided one-third interest in and to said allotment was at the time of such assessment, levy and extension taxable and subject to taxation and are without information as to the taxability of the remaining interest; that if any interest in and to said premises was in fact exempt from taxation during said trust period the defendants are ready and willing to cancel and abate all taxes on such interest.

(E) With respect to Parcel 5 described in paragraphs II and III of said amended complaint that the plaintiff herein did under date of May 21, 1908, duly issue and deliver to Maggie Gagnon, the allottee thereof, a patent in fee simple conveying to said Maggie Gagnon said allotment in fee simple wholly discharged from the trust set out in its trust patent; that said land thereupon became and was subject to taxation and taxable and it became and was the duty [fol. 11] of the officials of said County of Mahnomen, Minnesota, to assess, levy and extend taxes against the same.

(F) With respect to Parcel 6 described in paragraphs II and III of said amended complaint that the officials of the County of Mahnomen have erroneously and in the mistaken belief that said land was taxable attempted to assess, levy and extend taxes against the same within the twenty-five year trust period and concede that such taxes assessed, levied and extended prior to the year 1934 are void and defendants are ready and willing to cancel and abate the same.

(G) With respect to Parcel 7 described in paragraphs II and III of said amended complaint that the officials of the County of Mahnomen did assess, levy and extend taxes against said land for the years 1923 to 1934 and for subsequent years; that the taxes so levied and extended for the year 1928 and for subsequent years, being after the expiration of the twenty-five year trust period, were valid, regular and enforcible; that on June 30, 1936, one Robert Pearson purchased a State Assignment of said taxes for the years 1923 to 1925 for Thirty-Three and 22/100 Dollars and on the same day said Robert Pearson purchased a State Assignment of said taxes for the years 1926 to 1934 for One Hundred Forty-Five and 93/100 Dollars all pursuant to the provisions of Chapter 387 of the Laws of Minnesota for 1935 permitting purchase of such taxes at specified reductions; that these answering defendants allege upon information and belief that said Robert Pearson in purchasing said State Assignments acted as the agent and attorney for Isabelle Garden, the allottee of said premises, and used her money to purchase the same for the purpose of paying, adjusting and discharging her said taxes upon the basis of the reductions authorized by said Chapter 387; that these answering defendants have been and are still

willing to refund to whoever may be entitled thereto the amount paid for said State Assignments with interest and will then relevy and extend taxes for 1928 and subsequent years pursuant to the laws of the State of Minnesota.

[fol. 12] IV

Except as hereinbefore specifically admitted, qualified or denied, deny each and every allegation, matter and thing in said complaint alleged and the whole thereof.

Wherefore, these answering defendants respectfully pray that said action be dismissed for lack of jurisdiction, and, if that be denied, that said action be dismissed as to said parcels 1, 3 and 5 and that such order be entered with respect to the remaining parcels as the facts and proof may justify.

Dated November 15, 1940.

L. A. Wilson, County Attorney, Attorney for State of Minnesota and the County of Mahnomen and its officers, Mahnomen, Minnesota.

Endorsed:

Due and personal service of the within answer is hereby admitted this 30th day of November, 1940.

C. U. Landrum, Spl. Asst. U. S. Atty., Attorney for Plaintiff.

[File endorsement omitted.]

In United States District Court

[Title omitted]

Stipulation of Facts—Filed January 8, 1941

[fol. 13] Subject to the objections as matter of law made by the defendants to the jurisdiction of the court; their objection that the action is premature in that available remedies in the state courts have not been exhausted; their objection that the complaint does not state facts sufficient to constitute a cause of action; their objection that said complaint does not state facts sufficient to entitle the plain-

tiff to recover either for itself or in behalf of the Indian allottees involved monies paid by said allottees or others in payment of or redemption of taxes upon the premises involved.

It Is Stipulated that the facts in the above entitled matter are as follows:

As to Parcel 1:

That Trust Patent was issued to Edward Beaulieu under date of July 21, 1902, and the 25 year trust period did not expire until July 21, 1927. That on September 26, 1938, this allottee sold the land to Eddie and Sidney Stephenson. That said land was taxed prior to 1927 and that upon the application of the said Edward Beaulieu, dated September 28, 1936, a compromise agreement was entered into whereby the sum of $58.00 was paid by the said Edward Beaulieu in full settlement of all taxes up to and including the year 1935. That said application was made to the Board of County Commissioners of Mahnomen County and the Minnesota Tax Commission.

As to Parcel 3:

Upon the application of M. L. Burns, Superintendent, Consolidated Chippewa Indian Agency, in behalf of the [alottee], taxes upon this land have been abated and cancelled and this parcel of land may be dismissed from the proceeding.

[fol. 14] As to Parcel 4:

That Trust Patent was issued to Maggie Fairbanks on July 21, 1902, and the 25 year trust period did not expire until July 21, 1927. That said land was taxed prior thereto. That no valid conveyance was ever made affecting an undivided ⅔ interest therein.

As to Parcel 5:

Fee Simple patent was issued at the request of the allottee and this parcel of land may be stricken from this action.

As to Parcel 6:

That Trust Patent was issued to Susan McDougall on October 12, 1908, and the 25 year trust period did not

expire until October 12, 1933. That said land was not legally taxable until the year 1934.

As to Parcel 7:

That Trust Patent was issued to Isabelle Garden on December 13, 1902. That said land was not legally taxable prior to the year 1928. That on June 30, 1936, Robert Pearson purchased a State Assignment Certificate for the years 1923 to 1925 for the sum of $33.22, and on the same day said Robert Pearson purchased a State Assignment Certificate covering taxes for the years 1926 to 1934 for the sum of $145.93. That in so doing, the said Robert Pearson acted as agent and attorney for Isabelle Garden. That said Isabelle Garden paid other taxes on said land covering years prior to 1928.

Dated January 8, 1941.

L. A. Wilson, County Attorney, Mahnomen County, Minnesota, Attorney for State of Minnesota and County of Mahnomen and its Officials. C. U. Landrum, Special Assistant U. S. Attorney, one of the Attorneys for the Plaintiff.

[fol. 15] As to Parcel 2:

Trust patent was issued to Susan Lucas under date of February 6, 1908, and the 25 year trust period did not expire until February 6, 1933. That said land was taxed for the year 1933 and prior years.

L. A. Wilson, C. U. Landrum.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO AMOUNTS OF TAXES PAID ON PARCEL 7 BY INDIAN ALLOTTEE—Filed April 8, 1941

It Is Hereby Stipulated And Agreed by and between the parties hereto, the County of Mahnomen, by and through L. A. Wilson, County Attorney, and the United States of America, by and through D. N. Lindeman, Special Attor-

ney, that as to Parcel 7 herein, the Indian Allottee paid the following amounts of taxes on the dates set forth:

Year for which tax levied	Date Paid	Amount Paid
1911	August 24, 1917	$35.85
1912	August 24, 1917	34.48
1913	August 24, 1917	26.21
1914	August 24, 1917	28.38
1915	August 24, 1917	25.69
1916	December 24, 1917	28.64
1917	(May 24, 1918	14.95
	(October 31, 1918	14.95
1918	(May 17, 1919	15.91
	(September 27, 1919	15.92
1919	May 24, 1920	43.38
1920	February 17, 1922	63.17
1921	(May 2, 1922	29.22
	(October 7, 1922	29.22
1922	June 30, 1936	53.23
1923	June 30, 1936	63.39
1924	June 30, 1936	34.81
1925	June 30, 1936	40.12
1926	June 30, 1936	34.75
1927	June 30, 1936	48.62

It is further stipulated and agreed by and between the parties hereto that the records of the District Court, State [fol. 16] of Minnesota, Fourteenth Judicial District, County of Mahnomen, show that an action therein, entitled Isabelle Garden, Plaintiff vs. County of Mahnomen, was commenced in said court on February —, 1923, seeking to recover from the defendant County of Mahnomen moneys paid by said plaintiff to said defendant for taxes levied against the E½SE¼ of Section 5, Township 144 North, Range 41 West (Parcel 7 in the above entitled proceeding) for the years 1911 to 1921, both inclusive: That thereafter a demurrer was interposed to the amended complaint filed therein, said demurrer being on the ground that said complaint failed to state a cause of action and that said demurrer was sustained by order of the said State District Court dated March 11, 1927. The record fails to disclose that any further action is dais proceeding was taken and further shows that said action was brought in behalf of said plaintiff under the laws of the State of Minnesota by A. J. Powers, Attorney at Law, Mahnomen, Minnesota, and that the United States was not a party to said action and had no knowledge thereof.

That said taxes for the years 1922 to 1927, both inclusive, were paid and discharged by the said allottee by the purchase by her by State Assignment Certificate No. 76 in the amount of $33.22 covering the taxes for the years 1922 to 1925, both inclusive, and State Assignment Certificate No. 232 in the amount of $145.93 covering taxes for the years 1926 to 1934, both inclusive, all pursuant to Chapter 387 Laws of Minnesota for 1935, that the aggregate for said State Assignment Certificates is the sum of $179.15 and that the valid taxes for the years 1928 to 1934, both inclusive, thereby discharged amounted to $245.57 without penalty or interest and that therefore said allottee affected a saving of $66.42 plus penalty and interest by the purchase of said State Tax Assignment Certificates.

Dated this 8th day of April, 1941.

L. A. Wilson, County Attorney, Mahnomen County, Minnesota. D. N. Lindeman, Special Attorney, United States of [Attorney].

[fol. 17] [File endorsement omitted.]

In United States District Court

[Title omitted]

Findings of Fact and Conclusions of Law—Filed July 15, 1941

The above entitled matter came before the Court on the 7th day of January, 1941, at the Court Room in the City of Fergus Falls, Minnesota, at a regular term of this Court.

C. U. Landrum, Special Assistant United States Attorney, appeared in behalf of the plaintiff, and L. A. Wilson, Esq., County Attorney in and for the County of Mahnomen, State of Minnesota, appeared in behalf of the defendants with the exception of the defendant Robert Pearson, who did not appear in person or by counsel.

The matter was submitted to the Court on a stipulation as to facts and briefs were later filed by both parties. On consideration thereof, together with all the files and records

herein, the Court makes and files the following as its Findings of Fact and Conclusions of Law, to-wit:

Findings of Fact

I

That the defendant County of Mahnomen is and at all times herein mentioned was a municipal corporation, duly [fol. 18] organized and existing under and by virtue of the laws of the State of Minnesota as a County in said State. That Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen, John Adams, John J. Spaeth, Adolph J. Paul, Sigvald Tveit, Camilla Hardy are citizens of and residents of and are officials of said County of Mahnomen, now holding the official positions designated after their names, respectively, and Robert Pearson is a citizen of and resident of said County of Mahnomen, and that this action is brought against said officials in their official capacity and against Robert Pearson individually.

II

That at all times herein mentioned said plaintiff by reason of the laws and treaties hereinafter referred to has exercised, through the proper department of its government, sovereign power and authority over certain parcels of land and the taxation thereof for the period of twenty-five years from and after the date of issuance of the trust patents hereinafter referred to; said parcels being described as:

Parcel 1. Lot Seven (7) and Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian.

Parcel 4. Lots One (1) and Two (2), of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 5. Lot One (1) of Section Ten (10), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

[fol. 19] Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼); the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian.

III

That in accordance with the treaties and laws of the United States pertaining to Indians, the plaintiff herein duly executed its trust patents as follows:

Parcel 1. Lot Seven (7) and the Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Original Allotment No. 504, issued to Edward Beaulieu, July 21, 1902.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 2520, issued to Susan Lucas, February 6, 1908.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23) Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 3016, issued to Zennie Tibbetts or Nun de be zhe keence, January 26, 1911.

Parcel 4. Lots One (1) and Two (2) of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian,

Minnesota, Original Allotment No. 277, issued to Maggie Fairbanks, July 21, 1902.

Parcel 5. Lot One (1) of Section Ten (10), Township One Hundred Forty-six (146) North, Range Forty-one [fol. 20] (41) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 174, issued to Maggie Gagnon, February 6, 1908.

Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼); the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 213, issued to Susan McDougall, October 12, 1908.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Original Allotment No. 3612, issued to Isabelle Garden, December 13, 1902. said trust patents being executed in conformity with the Act of Congress approved February 8, 1887 (24 Stat. 388-9) and the Act of January 14, 1889 (25 Stat. 642), under the terms of which the plaintiff held title to the land above described and embraced in the trust patents covering parcels 2, 4, 6 and 7 for the use and benefit of said Indians or in the case of his or her decease for the sole use of his or her heirs, for a period of twenty-five (25) years from the date of issuance of said trust patents and that at the expiration of said period would convey the same by patent to said Indians or his or her heirs in fee, discharged of said trust and free of all charge or encumbrance whatsoever.

IV

The plaintiff at all times during said trust period held parcels of land herein referred to as numbers 2, 4, 6 and 7 in trust for the lawful heirs of said allottees under the terms of and subject to the conditions of said trust patents heretofore issued and heretofore referred to.

V

That as to Parcel 1, said land was [taxes] prior to 1927. Under date of September 23, 1936, a compromise agree-

ment was entered into between Edward Beaulieu, allottee, and Mahnomen County, whereby all taxes up to and in- [fol. 21] cluding the year 1935 were settled and compromised for the sum of $58.00, which was less than the taxes levied and assessed against said land after the expiration of the trust period.

VI

That as to Parcel No. 3, all taxes have been abated and cancelled upon application.

VII

That as to Parcel No. 5, a fee simple patent was issued upon application of the allottee.

VIII

That as to Parcel 7, the Indian allottee thereof, namely Isabelle Garden, paid taxes as follows:

Year for which tax levied	Date Paid	Amount Paid
1911	August 24, 1917	$35.85
1912	August 24, 1917	34.48
1913	August 24, 1917	26.21
1914	August 24, 1917	28.38
1915	August 24, 1917	25.69
1916	December 24, 1917	28.64
1917	(May 24, 1918	14.95
	(October 31, 1918	14.95
1918	(May 17, 1919	15.91
	(September 27, 1919	15.92
1919	May 24, 1920	43.38
1920	February 17, 1922	63.17
1921	(May 2, 1922	29.22
	(October 7, 1922	29.22
1922	June 30, 1936	53.23
1923	June 30, 1936	63.39
1924	June 30, 1936	34.81
1925	June 30, 1936	40.12
1926	June 30, 1936	34.75
1927	June 30, 1936	48.62

that in February 1923, the said Isabelle Garden commenced an action in the state district court of the County of Mahnomen entitled Isabelle Garden, plaintiff vs. County of Mahnomen, defendant, seeking to recover from the defendant County of Mahnomen moneys paid by said plain-

tiff to said defendant for taxes levied against the E½ SE¼ [fol. 22] of Section 5, Township 144 North, Range 41 West (Parcel 7 above described) for the years 1911 to 1921, both inclusive; that thereafter a demurrer was interposed; that said demurrer was sustained by order of the said State District Court dated March 11, 1927; that no further action in that proceeding was had or taken; that the United States was not a party to said action and was not bound thereby; that taxes levied and assessed on this land for the years subsequent to 1921 culminated in a tax certificate and, subsequently, State Assignment Certificate No. 76 was issued to Isabelle Garden by the State of Minnesota for the sum of $33.22 covering the years 1922 to 1925, both inclusive; that State Assignment Certificate No. 232, covering taxes levied and assessed for the years 1926 to 1934, both inclusive, was issued to Isabelle Garden in consideration of a Judgment of $145.93.

IX

That said Isabelle Garden is a mixed blood Indian and was born in the month of July, 1893.

CONCLUSIONS OF LAW

I

That the plaintiff, the United States of America, has such interest in the subject matter as will support this action, and this action is brought by the real party in interest.

II

That this action be dismissed as to those parcels of land described in the complaint herein as Parcels 1, 3 and 5.

III

That this action be dismissed as to the defendant State of Minnesota.

IV

That the taxes levied and assessed as to each of the parcels of land in the County of Mahnomen, State of Minnesota, listed hereafter, be abated and cancelled prior to the date noted after each description, which date designates the expiration of the trust period of the patent granted by the plaintiff.

[fol. 23] Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian, February 6, 1933.

Parcel 4. An undivided two-thirds (⅔) interest in and to: Lots One (1) and Two (2) of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, July 21, 1927.

Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼) and the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian, October 12, 1933.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian, December 13, 1927.

V.

That the assessment of the lands herein referred to as parcels 2, 4, 6 and 7 and the levy of taxes thereon, the sales for taxes, the issuance of any state assignment certificates, the issuance and service of any notices of expiration of redemption, any forfeitures for non-payment of said taxes, and all other acts of the defendants and each of them, pertaining to the taxation of said lands during said periods, are declared illegal and void.

VI.

That the files and records of the County of Mahnomen and the offices of the officials of said County be amended and corrected so as to remove the lands herein referred to as parcels 2, 4, 6 and 7, from the tax lists and records during the years covered by the said trust periods and all apparent liens and incumbrances, sales and forfeitures for taxes during said period be expunged from the files and records of said county.

VII.

That the plaintiff have judgment against the defendant, County of Mahnomen, for any and all monies collected [fol. 24] for taxes levied and assessed against the parcel of land described herein as Parcel No. 7, covering the years 1911 to 1921, both inclusive, in the total sum of $405.97.

Let Judgment Be Entered Accordingly.
Dated this 9th day of July, 1941.
By the Court:
George F. Sullivan, United States District Judge.

[File endorsement omitted.]

In United States District Court

No. 79. Civil

United States of America, Plaintiff,

vs.

State of Minnesota; County of Becker, a municipal corporation, et al., Defendants.

No. 78. Civil.

United States of America, Plaintiff,

vs.

State of Minnesota; County of Mahnomen, a municipal corporation, et al., Defendants

No. 80. Civil.

United States of America, Plaintiff,

vs.

State of Minnesota; County of Clearwater, a municipal corporation, et al., Defendants.

Opinion—Filed May 5, 1941

These suits involve the questions:

(1) The right of the United States, after the expiration of the trust period, to maintain a suit to recover taxes

paid by the allottee during the twenty-five year trust period, and clear the title of said lands from all liens created by taxes assessed, but not paid, against the same, during said trust period;

(2) The question as to whether or not the statute of limitations applies;

(3) Whether the United States must exhaust the administrative remedies provided for in the State laws;

[fol. 25] (4) The right of the United States to maintain a suit after the expiration of the trust period to recover taxes assessed against an allottee's land during the trust period, but paid or compromised by said allottee after the expiration of the trust period;

(5) The right of the plaintiff to injunctive relief herein.

The lands involved in said actions are lands which were allotted to mixed-blood Chippewa Indians, and covering which lands trust patents have been issued. The trust patents and laws pursuant to which they were issued provide that the United States will convey the lands at the expiration of the twenty-five year trust period to the Indian allottee, or his or her heirs "free of all charge or encumbrance whatsoever."

The complaints allege that the lands at all times referred to in the complaints were not subject to taxation, since said taxes were levied and imposed upon said lands during the said twenty-five year period, but that taxes were wrongfully levied and assessed against the lands during said period. The relief asked by the plaintiff is for a judgment and decree that the defendants have no right, title or interest in or to said lands or lien thereon; that the so-called encumbrances, tax liens and tax deeds described in the complaint are void and of no effect whatsoever, and that the same be set aside; that all of said taxes for said twenty-five year period be abated and cancelled, and that the assessment of said lands and the levy of taxes thereon, sale thereof for taxes, the issuance of said tax deeds, and all other acts of the defendants pertaining to the taxation of said lands, and the attachment of said lands for said twenty-five year period, be declared illegal; that the files and records in all county offices of said counties reflecting the acts of any of the officers of said counties in the imposition of

taxes upon said lands for said twenty-five year period be declared void; that the defendants be restrained from assessing or taxing said lands, or any part thereof, for the twenty-five year period, or making any entry or record in the files or records of the defendant State and/or County in any way affecting the title of said lands; that the Court [fol. 26] order and direct the defendant counties to refund any and all moneys which have been collected for taxes levied and assessed against the parcels of land described in the complaints during the times covered by the trust patents.

The defendants in their answer contend that this Court is without jurisdiction; that the United States has failed to exhaust its possible administrative remedies; that the complaints fail to state a cause of action; that the United States is without capacity to bring the present actions; that taxes voluntarily paid by emancipated Indians may not be recovered; that recovery of the taxes is barred by the statute of limitations.

The United States, at different times subsequent to the passage of the General Allotment Act of February 8, 1887 (24 Stat. 388) and the Nelson Act of January 14, 1889 (25 Stat. 642), allotted the several parcels set out in the complaints herein to the named mixed-blood Chippewa Indians in the White Earth Indian Reservation of Minnesota.

The patents issued were the so-called trust patents, whereby the land, for a period of twenty-five years, was held in trust by the United States for the sole use and benefit of said Indians, and in case of their death, for the sole use and benefit of their heirs at law, and at the expiration of the trust period the government agreed to convey said lands to said Indians or their heirs by a patent in fee "discharged of said trust and free of all charges or encumbrances whatsoever • • • ."

It is settled law that these trust patents created a vested right in the allottees, or their heirs, to receive the lands at the end of the twenty-five year trust period free from state and local taxation. Morrow vs. United States, 8th Cir., 243 Fed. 854; Choate vs. Trapp, 224 U. S. 665; United States vs. Spaeth, 24 Fed. Supp. 465.

While it is conceded by the defendants that any taxes imposed upon the Indians' lands during the trust period

are void, they argue that these suits, not having been instituted until after the expiration of the trust period, and then by the United States rather than the Indians, cannot be maintained.

[fol. 27] While the United States has no pecuniary interest in the result of this litigation, it was, however, a trustee for said Indians during said trust period. It was its duty to preserve the property allotted to the respective Indians free and clear from any encumbrance whatsoever. The imposition of taxes by the County upon Indian lands violated the terms of the General Allotment Act of February 8, 1887, and the conditions of the trust patent held for the benefit of the Indians by the government.

The defendants argue that the United States is under no duty and has no right to maintain these suits. This contention cannot be sustained. The government, under the law and the terms and conditions of the trust patent, was required to deliver patents to the Indians at the end of twenty-five years "free and clear of any encumbrance." It was the obligation of the government to do this. As trustee it was bound to protect the property of the Indians from unjust imposition of taxes upon their lands. Congress may, if it thinks fit, emancipate the Indians from their wardship, wholly or partially. United States vs. Waller, et al., 243 U. S. 452-9. It is claimed that under the Nelson Act of January 14, 1889, and the Clapp Act of June 21, 1906 (34 Stat. 325-353) the government has emancipated the Indian. That may be conceded, but the government cannot escape its legal and moral duty to the Indian requiring it to deliver to him the lands free and clear of encumbrances. See United States vs. Minnesota, 270 U. S. 181. Clearly the government, in the performance of its duty as a trustee of the property of the Indian and upon whom the obligation is imposed by statute and by the covenants of the trust patent, is required to fully comply with the directions of its trusteeship, and it clearly has the duty, having failed during the trust period, to see that the trust property is free from encumbrances created during the trust period and to undo the wrongs which it failed to prevent. Board of Commissioners of Tulsa County, Oklahoma vs. United States, 94 Fed. (2nd) 450-452.

The statute of limitations, limiting the time within which actions may be brought, has no application to the United

States when suing to enforce a public right or to protect the interests of its Indian wards. This principle of law [fol. 28] seems to be firmly established by the decision in United States vs. Minnesota, supra, page 196. Compare United States vs. Thompson, 98 U. S. 486; United States vs. Nashville, Chattanooga & St. Louis Railway Company, 118 U. S. 120-126; United States vs. Summerlin, 310 U. S. 414.

The argument that the United States must comply with the provisions of the State statutes for the recovery or cancellation of invalid State taxes is without merit. A refusal to comply with the State statute by the United States does not bar it from bringing these actions. Board of County Commissioners of Osage County, Oklahoma, et al. vs. United States, 64 Fed. (2nd) 775, and cases cited.

It appears from the stipulation of facts that some of the taxes in controversy were assessed upon the lands and paid subsequent to the date of the expiration of the twenty-five year trust period. A recovery of such taxes cannot be had. Neither is the plaintiff entitled to any relief as to any liens which may have been created against said lands because of said taxes. The trust period had expired at the time of the assessment of said taxes. The government at that time had fully performed the conditions of the trust and had theretofore delivered the property to the Indian "free and clear of all encumbrances" as to such taxes.

The stipulation further recites that in some instances taxes were assessed and extended upon the tax books of the County against certain Indian lands before and after the expiration of the trust period, and further, that the Indians, after the expiration of the trust period, paid or compromised all of such taxes, those assessed and levied before the expiration of the trust period, and those assessed and levied subsequent to the expiration of the trust period, in a lump sum. The government now seeks recovery of such payments so made by the Indians in compromise and settlement of said taxes.

Even though it is held that the government owed the Indian the duty of faithfully and fully performing the obligations of its trust, it does not follow that where the allottee after the expiration of the trust period voluntarily [fol. 29] makes a settlement, either by payment or compromise with the wrong-doer, the taxing authorities, the

government may recover from the county the payments so made by the allottee. There must be some limitation as to when the government is relieved of its stewardship.

The so-called Clapp Amendment (Act of June 21, 1906, 34 Stat. 325-353) emancipated the Indian to the extent that he might sell and transfer, and deal with his land, as he saw fit.

The trust period in these last-mentioned instances had expired. The land affected thereby had been freed from the terms and conditions of the trust, and the inhibition against local taxing authorities imposing taxes thereon. The Indian was then as free to deal with his lands as any white man would be to deal with lands which he owned, and the lands of both white and Indian were subject to the imposition of the same taxes. The Indian was a citizen of the United States, entitled to all the rights, privileges and immunities as such citizen. At the time he made the compromise or settlement of taxes against his property he had the right to assert in his own name, in court or elsewhere, such claims as he cared to make, and defend those made against him. See United States vs. Richards, (8th Cir.) 27 Fed. (2nd) 284-286. The allottee had the right, if he saw fit, to await the action of the government, or to request it to carry out the duties of the trust and clear his land from the liens, based on illegal taxes against it, or he could, as the absolute owner of the fee of said land, take such other steps to remove the clouds upon the title of his land as were available to him.

The Supreme Court of Minnesota has recognized the right of a mixed-blood Chippewa Indian of the White Earth Indian Reservation to maintain a suit against a county to recover taxes illegally imposed upon his allotment during the trust period. See Warren vs. Mahnomen County, 257 N. W. 77. While the allottee had the right to have the illegal lien disposed of by action of the United States, he elected to pursue a remedy which was available to him personally. The allottee has made his election and has compromised and settled the tax claims. The government should not, at this time, be permitted to overrule [fol. 30] the voluntary action and election of the allottee to proceed in a manner which he deemed wise and prudent.

In Ward, et al., vs. Board of County Commissioners of Love County, Oklahoma, 253 U. S. 17, in considering a

question involving payment of taxes illegally assessed against the lands of an Indian, the Court said (page 22):

"We accept so much of the Supreme Court's decision as held that, if the payment was voluntary, the moneys could not be recovered back in the absence of a permissive statute, and that there was no such statute. • • • "

The question as to whether or not the payment of the moneys involved was voluntary or involuntary need give us no concern. The settlements were made by the Indians after they were emancipated and there is no evidence in the case to show that their election to proceed in the manner in which they did was involuntary.

Indian lands held by the United States in trust for the benefit of the Indians are exclusively under the jurisdiction of the federal government, and it has full power to legislate with respect thereto. This right cannot be interfered with by the State authorities. See United States vs. Rickert, 188 U. S. 432, 438.

The provision of Section 41 (1), 28 U. S. C. A. denying jurisdiction to district courts

"of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law • • • "

is not applicable. The purpose of these suits does not question the type of tax. It does question the right of the officers of the State, and its subdivisions and their officers, to impose any tax on the property of Indians, and to interfere with the power of the federal government in respect to Indian lands during the trust period. The purpose of the suit is to enjoin defendants' interference with the Indians' lands.

This Court has no jurisdiction of a suit against the State, and these proceedings, as against the State, are dismissed. [fol. 31] The plaintiff in each case is entitled to judgment against the County:

(1) for the aggregate of the taxes imposed and collected by that County illegally, as determined in this Memorandum, without interest; and that all records of said County based upon said illegal taxes be declared null and void;

(2) for such mandatory relief against the individual defendants as is prayed for in the complaint, insofar as may be in accord with this Memorandum;

(3) that the defendant County and its proper taxing officers be restrained from assessing or taxing said lands during the twenty-five year trust period, and from making any entry or record based on taxes during said trust in the files or records of said County affecting the title to said lands or any part thereof;

(4) for the costs and disbursements of this action.

Findings of fact and conclusions of law in accordance herewith may be presented upon notice.

Dated this 3rd day of May, 1941.

George F. Sullivan, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 32] SUPPLEMENTAL MEMORANDUM—Filed May 16, 1941

The Memorandum heretofore filed in the above entitled actions is hereby supplemented and clarified, particularly with reference to the case of the United States of America, Plaintiff, vs. State of Minnesota; County of Mahnomen, a municipal corporation, et al., Civil No. 78, as follows:

Re: Parcel No. 7, Mahnomen County:

The above tract was placed on the tax rolls of Mahnomen County in the year 1911, and so far as we are here concerned, remained on the tax rolls of said County all during the twenty-five year trust period, which expired in the year 1928.

Taxes for the years 1911 to 1921 were paid by the allottee to the County, prior to the expiration of the trust period. In 1923 the allottee commenced a suit in the state court against said County to recover the taxes paid by her theretofore. A demurrer was interposed to the complaint. This demurrer was sustained by the State District Court and no

appeal was taken therefrom. This state court case cannot be regarded as res adjudicata in this proceeding. The United States was not a party to the state court suit, and clearly, under the rule in the case of Warren vs. County of Mahnomen, 257 N. W. 77, decided subsequent to said state court proceeding, in the year 1934, the Indian had the right to maintain a suit against the County to recover taxes illegally imposed upon his allotment during the trust period.

The government in this case is entitled to recover all taxes paid by the allottee during the trust period, being the taxes for the years 1911 to 1921, both inclusive. The taxes on this parcel for the years 1922 to 1927, both inclusive, and for subsequent years, were disposed of in the year 1936 by the voluntary action of the "emancipated" Indian through her purchase of state assignment certificates. As to the money which the Indian paid as and for these assignment certificates, or the taxes represented in [fol. 33] such assignment certificates, the government is not entitled to recover.

Dated this 15th day of May, 1941.

George F. Sullivan, United States District Judge.

[File endorsement omitted.]

In United States District Court

No. 78. Civil.

United States of America, Plaintiff,

vs.

State of Minnesota; County of Mahnomen, a municipal corporation; Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen, and John Adams, as County Commissioners of said County, and their successors in office; John J. Spaeth as Auditor of said County and his successors in office; Adolph J. Paul as Treasurer of said County and his successors in office; Sigvald Tveit as Register of Deeds of said County and his successors in office; Camilla Hardy as Clerk of Court of said County and her successors in office, and Robert Pearson, Defendants.

JUDGMENT—Filed March 7, 1942

The above entitled action having been brought to a trial by the Court, and the Court having made and filed its findings of fact and conclusions of law and directed judgment in accordance therewith and a motion by defendant County of Mahnomen and all its officers for amended findings of fact and conclusions of law or a new trial having been desired,

Now on motion of C. U. Landrum, Special Assistant United States Attorney, as attorney for plaintiff,

It Is Adjudged:

I

That the plaintiff, the United States of America, has such interest in the subject matter as will support this [fol. 34] action, and this action is brought by the real party in interest.

II

That this action be and hereby is dismissed as to those parcels of land described in the complaint herein as Parcels 1, 3 and 5, more particularly described as follows:

Parcel 1. Lot Seven (7) and Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3) Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23) Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian.

Parcel 5. Lot One (1) of Section Ten (10), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

III

That this action be and hereby is dismissed as to the defendant State of Minnesota.

IV

That the taxes levied and assessed as to each of the parcels of land in the County of Mahnomen, State of Min-

nesota, listed hereafter, be abated and cancelled prior to the date noted after each description, which date designates the expiration of the trust period of the patent granted by the plaintiff.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian, February 6, 1933.

Parcel 4. An undivided two-thirds (⅔) interest in and to: Lots One (1) and Two (2) of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, July 21, 1927.

[fol. 35] Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼) and the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian, October 12, 1933.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian, December 13, 1927.

V

That the assessment of the lands herein referred to as parcels 2, 4, 6, and 7 and the levy of taxes thereon, the sales for taxes, the issuance of any state assignment certificates, the issuance and service of any notices of expiration of redemption, any forfeitures for non-payment of said taxes, and all other acts of the defendants and each of them, pertaining to the taxation of said lands during said periods, are declared illegal and void.

VI

That the files and records of the County of Mahnomen and the offices of the officials of said County be amended and corrected so as to remove the lands herein referred to as parcels 2, 4, 6 and 7, from the tax lists and records during the years covered by the said trust periods and all apparent liens and incumbrances, sales and forfeitures for

taxes during said period be expunged from the files and records of said county.

VII

That the plaintiff have judgment against the defendant, County of Mahnomen, for any and all monies collected for taxes levied and assessed against the parcel of land described herein as Parcel No. 7, covering the years 1911 to 1921, both inclusive, in the total sum of $405.97 without interest thereon, and the Clerk of this Court is hereby directed to forthwith docket said judgment in the judgment lien docket of his office.

[fol. 36] Dated at St. Paul, Minnesota, this 5th day of March, 1942.

By the Court:

George F. Sullivan, United States District Judge.

[File endorsement omitted.]

In United States District Court

Motion of Defendants for Amended Findings, Conclusions of Law, etc., and in the Event That Be Denied, For a New Trial—Filed March 28, 1942.

[Title omitted]

To the United States of America, Plaintiff in the Action Above Entitled; and to Victor E. Anderson, United States Attorney, District of Minnesota, and C. U. Landrum, Special Assistant United States Attorney, District of Minnesota, Its Attorneys:

Come now the defendants, County of Mahnomen, and its officials above named, and upon the grounds that the present findings of fact are in part contrary to the evidence and to the law and to some extent contain conclusions of law and that the present conclusions of law are in part [fol. 37] without support in the findings and contrary to law, respectfully move the court:

First

For an order setting aside and vacating the order for judgment and the judgment and decree entered in the above

entitled action in favor of plaintiff and against said defendants, pursuant to the findings of fact and conclusions of law made and filed on March 5, 1941.

Second

For an order amending such findings of fact and conclusions of law, and order for judgment in the following respects, to-wit:

As to the findings of fact:

(a) By striking therefrom paragraphs II, III and IV and inserting in lieu thereof the following paragraph:

II

That pursuant to the Act of Congress approved February 8, 1887 (24 Stat. 388-9) and the Act of Congress approved January 14, 1889 (25 Stat. 642), the plaintiff herein duly executed on the dates set forth, to the allottees named, trust patents with respect to the hereinafter described parcels of land as follows:

Parcel 1. Lot Seven (7) and Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian. Trust patent issued on July 21, 1902 to Edward Beaulieu, by Original Allotment No. 504.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian. Trust patent issued on February 6, 1908 to Susan Lucas, by Additional Allotment No. 2520.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23), Township One Hundred Forty-three (143) North, Range Thirty-nine [fol. 38] (39) West of the Fifth Principal Meridian. Trust patent issued on January 26, 1911 to Zennie Tibbetts or Nun de be zhe keence, by Additional Allotment No. 3016.

Parcel 4. Lots One (1) and Two (2), of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Trust patent issued on July 21, 1902 to Maggie Fairbanks, by Original Allotment No. 277.

Parcel 5. Lot One (1) of Section Ten (10) Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian. Trust patent issued on February 6, 1908 to Maggie Gagnon, by Additional Allotment No. 174.

Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼); the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian. Trust patent issued on October 12, 1908 to Susan McDougall, by Additional Allotment No. 213.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian. Trust patent issued on December 13, 1902 to Isabelle Garden, by Original Allotment No. 3612.

(b) By amplifying paragraph IX to read as follows:

III

That said Isabelle Garden is a mixed-blood Indian of the White Earth Reservation in Minnesota and was born in the month of July, 1893.

(c) By adding thereto the following paragraph:

IV

That as to parcel 4, said land was taxed prior to July 21, 1927; that no valid conveyance was ever made affecting the undivided two-thirds interest therein.

(d) By striking from paragraph VIII the following words:

[fol. 39] "and was not bound thereby"
so that the clause wherein that phrase appears shall read as follows:

"that the United States was not a party to said action;".

That the conclusions of law be amended as follows:

(a) By striking paragraph I thereof and inserting in lieu thereof the following:

I

That the plaintiff, the United States of America, has such interest in the subject matter as will support this action to the extent that it seeks the removal of encumbrances with respect to parcels 2, 6 and a two-thirds interest in parcel 4, and in that respect this action is brought by the real party in interest.

(b) By amplifying paragraph II thereof to read as follows:

II

That this action be dismissed as to those parcels of land described in the complaint herein as parcels 1, 3, 5, and a one-third interest in parcel 4.

(c) By striking from paragraph IV that part thereof with reference to parcel 7, which reads as follows:

"Parcel 7. The East Half of the Southeast Quarter ($E^1/_2$ $SE^1/_4$) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian, December 13, 1927."

(d) By striking paragraph V and inserting in lieu thereof the following:

V

That the assessment of the lands hereinafter referred to as parcels 2 and 6, and a two-thirds interest in parcel 4, and the levy of taxes thereon, the sales for taxes, the issuance of any state assignment certificates, the issuance and service of any notices of expiration of redemption, any forfeitures for non-payment of said taxes, and all other acts of the defendants and each of them, pertaining to the [fol. 40] taxation of said parcels during said periods, are illegal and void.

(e) By striking paragraph VI and inserting in lieu thereof the following:

VI

That the files and records of the County of Mahnomen in the offices of the officials of said County be amended and corrected so as to remove said parcels 2 and 6 and a two-thirds interest in parcel 4 from the tax lists and records during the years covered by the said trust periods and all apparent liens and encumbrances, sales and forfeitures for taxes during said period be expunged from the files and records of said county to the extent that the defendant county and its officials named herein have the authority to expunge the same.

(f) By adding thereto the following paragraphs:

VII

That Isabelle Garden, allottee of parcel 7 herein, as an adult mixed-blood Indian of the White Earth Reservation in Minnesota, and her said allotment were subject to the so-called Clapp Amendments of June 21, 1906 (34 Stat. 325, 353) and March 1, 1907 (34 Stat. 1015, 1034).

VIII

That the taxes paid by said Isabelle Garden were voluntarily paid and may not be recovered.

IX

That the state court order in the action brought by Isabelle Garden against the said County of Mahnomen is res adjudicata between the said parties thereto.

X

That the state court order in the action brought by Isabelle Garden against the said County of Mahnomen is binding upon the plaintiff herein and may not be collaterally attacked in this proceeding.

(g) By striking paragraph VII and inserting in lieu thereof the following paragraphs:

[fol. 41]

XI

That the plaintiff, the United States of America, has no interest in the sums paid by said Isabelle Garden as taxes

herein involved, and said plaintiff is therefore not the real party in interest and is not entitled to bring this action for the recovery thereof.

XII

That the taxes assessed and levied with respect to the allotment of Isabelle Garden the payments of which are specified in the findings herein are valid.

XIII

That this action be dismissed as to parcel 7.

Third

In the event that the foregoing motion for amended findings and conclusions be denied, said defendants move that the case be reopened for additional testimony, or for a new trial, for the purpose of presenting evidence on the following points which are deemed to be of controlling importance:

1. The relationship between the organization of Mahnomen County and the passage of the Clapp Amendments.

2. The need for payment of taxes by Indians to make available the benefits accruing from county organization.

3. The factual background in response to which the Clapp Amendments were enacted and their practical construction.

4. The issuance of a fee simple patent on December 8, 1919 to Isabelle Garden by the President of the United States as demonstrating the policy of the Department of Interior with respect to adult mixed-blood Indians of the White Earth Reservation.

This motion is made upon the ground that this proceeding is a test case in two respects: first, that it will control the disposition of many other cases involving allottees who have voluntarily paid such taxes; second, that in this proceeding the Federal Government for the first time seeks to recover taxes voluntarily paid by emancipated Indians with respect [fol. 42] to allotments freed under the Clapp Amendments from governmental restriction. In a case of such importance, justice would require that the court have before it all material evidence bearing upon the issues.

As finally submitted, the only contested issue in this case involves the recovery of taxes paid by Isabelle Garden, an individual, on parcel 7. It, therefore, resolves itself into an action by the United States to recover taxes paid by an individual. The complaint tendered no such issue. Had it done so, these defendants would have been apprised of what was sought and would have been in position to prepare their case accordingly. It further appears that said Isabelle Garden paid her taxes voluntarily and, further, that she brought an action in a state court to recover them and lost. She, of course, is bound by her action. Since the United States brings this suit in her behalf, it must likewise be bound and may not recover in this action.

These defendants are prepared to show by competent evidence that there was a close relationship between the organization of the County of Mahnomen on January 1, 1907 and the enactment of the Clapp Amendments on June 21, 1906 and March 1, 1907. But for the enactment of said amendments, the County of Mahnomen for lack of taxable property could not have been organized. It is wholly within the White Earth Reservation and consists of 16 of the 36 townships comprising said Reservation. The Indian allottees of said Reservation who came from many parts of the state had already adopted the habits and customs of civilized life and were not in a savage or semi-savage state as was true of Indians on many other reservations. Most of them were mixed-bloods. At the time of the organization of the county, the Indian allottees were in a majority and controlled its organization. The first judge of probate, the first county attorney, and other officials were Indian allottees. The area of the county at that time was undeveloped, largely without roads, schools, and public buildings. At the time of the passage of the Clapp Amendments, the said Indian allottees were, as a class, competent and capable of managing their own affairs. Before the enactment of said amendments, all allotments were non-taxable as a matter of law. After their enactment, the question became one of fact as to each allotment, which question had to be passed [fol. 43] upon by the proper county officials in the first instance. Many allottees elected to pay and did pay taxes. The money so paid was used to build roads, schools, and public buildings and for relief. The allottees, in common with others, needed such roads, schools, and relief and

shared in the benefits. But for their contributions, it would have been impossible to provide such benefits.

These defendants would show also that the Clapp Amendments have been given a practical construction by local and federal officials, whereby all supervision and control over adult mixed-blood Indians and their allotments was removed from the Federal Government. Such allottees have also been recognized as having full power of management and control of their said allotments. This has included the right of said allottees to pay taxes on their said allotments. Such allotments but for their consent were not taxable. They have made such payments voluntarily. In the absence of consent, they would have a choice of remedies—

1. They could avail themselves of all existing remedies provided under state law,

2. They could call upon the United States to bring legal action to cancel and remove the tax liens on their allotments.

That such allottees have generally availed themselves of the rights given by state laws is shown by the records of the county in which are found numerous applications by them for abatement and refund of taxes. A great many of such applications have been granted. This practical construction is confirmed by the action of the Secretary of Interior in causing a patent in fee simple to be issued to said Isabelle Garden on December 8, 1919. So far as the plaintiff is concerned, said patent is unrevoked and must stand as a valid act.

Dated March 10, 1942.

J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Assistant Attorney General. Attorneys for Defendants County of Mahnomen and its officials above named, 102 State Capitol, St. Paul, Minne-[fol. 44] sota; L. A. Wilson, County Attorney for the County of Mahnomen and attorney for its officials above named. Mahnomen, Minnesota.

Endorsed: Due service of the within —— and Motion for Amended Findings, Conclusions of Law and Order for Judgment, and in the Event that be denied, for a New Trial, is hereby admitted this 12" day of March, 1942.

C. U. Landrum, Spl. Asst. U. S. Attorney, Attorney for Plaintiff.

[File endorsement omitted.]

In United States District Court

Order Denying Motion for Amended Findings, Conclusions, etc., or for a New Trial—March 28, 1942

The above entitled matter came on for hearing before the undersigned, one of the judges of the above named Court, on the 21st day of March, 1942, in his chambers in the Federal Courts Building, in St. Paul, Minnesota, upon the motion of the defendants County of Mahnomen and its officials above named, for an order setting aside and vacating the order for judgment and judgment and decree herein, and for an order amending the findings of fact and conclusions of law and order for judgment herein, and, in the event the foregoing motion be denied, for a new trial. By stipulation of parties, this motion was submitted to the Court upon the same arguments and briefs made on a previous motion, and without any further argument or briefs.

J. A. A. Burnquist, Attorney General for the State of Minnesota, George B. Sjoselius, Assistant Attorney General for the State of Minnesota, and L. A. Wilson, County Attorney for the County of Mahnomen, Minnesota, appeared as attorneys for the petitioning defendants, and

C. U. Landrum, Special Assistant United States Attorney appeared as attorney for the plaintiff.

[fol. 45] The Court being fully advised in the matter, and upon all the files and records.

It Is Ordered That the said motion of the defendants named be, and the same is hereby in all things denied.

Dated this 28th day of March, 1942.

George F. Sullivan, United States District Judge.

[File endorsement omitted.]

In United States District Court

[Title omitted]

Notice of Appeal—Filed May 18, 1942

Notice Is Hereby Given that County of Mahnomen, one of the defendants above named, hereby appeals to the Cir-

cuit Court of Appeals for the Eighth Circuit from the final judgment entered in this action on March 7, 1942.

Dated this 11th day of May, 1942.

J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Assistant Attorney General, 102 State Capitol, [fol. 46] St. Paul, Minnesota; L. A. Wilson, County Attorney, Mahnomen County, Mahnomen, Minnesota, Attorneys for Appellant.

[File endorsement omitted.]

Admission of Service

Service of the hereto attached Notice of Appeal is hereby admitted at Detroit Lakes, Minnesota, this 18th day of May, 1942.

United States of America, by C. U. Landrum, Special Assistant U. S. Attorney, Detroit Lakes, Minnesota.

[fol. 47] In United States District Court

Election as to Printing of Record—Filed June 18, 1942

To the Clerk of the Above Named Court:

Please Take Notice that the County of Mahnomen, a municipal corporation, appellant above named, having appealed said cause to the Circuit Court of Appeals of the Eighth Circuit, hereby elects and directs the Clerk of the above named Court to have the record on appeal printed by [fol. 48] and under the directions of the Clerk of the Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri.

Dated at Mahnomen, Minnesota, this 17th day of June, 1942.

J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Assistant Attorney General, 102 State Capitol, St. Paul, Minnesota, by L. A. Wilson, County Attorney, Mahnomen County, Mahnomen, Minnesota, Attorneys for Appellant.

[File endorsement omitted.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 49] In United States Circuit Court of Appeals, Eighth Circuit

[Title omitted]

Order for Printing of Record and Filing of Briefs under Former Rules of Court—July 13, 1942

On Consideration of the motion of appellant for leave to proceed with this appeal with respect to the printing and filing of the record and appellant's brief under the provisions of the former rules of this Court, It is Ordered that said motion be, and is hereby, granted, the record to be printed and briefs to be filed as was provided in the former rules of this Court.

July 13, 1942.

[fol. 50] In United States District Court

[Title omitted]

Cross-Appellant's Designation of Record on Appeal—Filed July 20, 1942

To the Clerk of the Above Named Court:

The appellee, United States of America, designates the following portions of the record and proceedings to be included in the record on appeal herein, in addition to those matters contained in the appellant's designation:

1. Statement of Points Relied on By Appellee on Its Cross Appeal.

2. Notice of Cross Appeal by the United States of America.

Dated July 18, 1942.

United States of America, by Victor E. Anderson, United States Attorney, District of Minnesota, by C. U. Landrum, Special Assistant U. S. Attorney, Detroit Lakes, Minnesota.

[fol. 51] Due service of Appellee's Designation of Additional Portions of the Record is hereby Admitted this 18th day of July, 1942.

L. A. Wilson, County Attorney, Mahnomen County, of Counsel for Appellant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF POINTS RELIED UPON BY CROSS-APPELLANT—Filed July 20, 1942

I

The Court erred in denying to plaintiff recovery of the amount paid for taxes for the years 1922 to 1925, inclusive.

Dated this 18th day of July, 1942.

United States of America, Victor E. Anderson, United States Attorney, District of Minnesota, by C. U. Landrum, Special Assistant U. S. Attorney, Detroit Lakes, Minnesota.

[File endorsement omitted.]

[fol. 52] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF CROSS APPEAL BY UNITED STATES OF AMERICA—Filed June 27, 1942

Notice is hereby given, that the United States of America, Plaintiff above named, by and through its United States Attorney for the District of Minnesota, and its Special Assistant United States Attorney, the undersigned, hereby cross appeals to the Circuit Court of Appeals for the Eighth Circuit from that part of the Final judgment entered in this action on March 7, 1942, which denied to plaintiff recovery of amount paid for taxes for the years 1922 to 1925, inclusive, Order denying motion for Amended Findings of Fact, Conclusions of Law and Order for Judgment or for a new trial being entered on March 28, 1942, express directions for said cross appeal being given by the Attorney General of the United States.

Dated this 27th day of June, 1942.

Victor E. Anderson, United States Attorney for the District of Minnesota. C. U. Landrum, Special Assistant United States Attorney, Attorneys for the Plaintiff, 221 Federal Courts Building, Saint Paul, Minnesota.

[fol. 53] Copy of this Notice to be sent to J. A. A. Burnquist, Esq., Attorney General, St. Paul, Minnesota. Geo. B. Sjoselius, Esq., Assistant Attorney General, St. Paul, Minnesota. L. A. Wilson, Esq., County Attorney, Mahnomen County, Mahnomen, Minnesota, Attorneys for Defendants.

[File Endorsement Omitted]

IN THE UNITED STATES DISTRICT COURT

CERTIFICATE OF CLERK ON MAILING OF NOTICE OF CROSS APPEAL—Filed June 30, 1942

This is to certify, that I, Thomas H. Howard, Clerk, United States District Court for the District of Minnesota, Sixth Division, have this day caused to be mailed to each of the following named parties who appear of record in the above entitled proceeding, at their respective addresses, as such addresses appear of record in these proceedings, copy of the original Notice of Cross Appeal to the Circuit Court of Appeals for the Eighth Circuit, by depositing the [fols. 54-61] same in the post office of the city of Fergus Falls, Otter Tail County, Minnesota:

J. A. A. Burnquist, Esq., Attorney General, Saint Paul, Minnesota. Geo. B. Sjoselius, Esq., Assistant Attorney General, Saint Paul, Minnesota. L. A. Wilson, Esq., County Attorney, Mahnomen County, Mahnomen, Minnesota.

Dated: June 30th, 1942.

Thomas H. Howard, Clerk, by Louise W. Smith, Deputy.

[File Endorsement Omitted]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 62] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, NOVEMBER TERM, 1942

ORDER OF SUBMISSION

Wednesday, November 4, 1942.

No. 12340

COUNTY OF MAHNOMEN, a municipal corporation, Appellant,

vs.

UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the District of Minnesota

and

No. 12376

UNITED STATES OF AMERICA, Appellant,

vs.

STATE OF MINNESOTA, et al.

Appeal from the District Court of the United States for the District of Minnesota

These causes, Nos. 12340 and 12376, having this day been called for hearing, are argued together, and argument was commenced by Mr. L. A. Wilson, County Attorney, and Mr. George B. Sjoselius, Assistant Attorney General, for the County of Mahnomen and State of Minnesota, et al., continued by Mr. Vernon L. Wilkinson, Attorney, Department of Justice, for the United States, and concluded by Mr. George B. Sjoselius, Assistant Attorney General, for the County of Mahnomen and State of Minnesota, et al.

Thereupon, these causes were submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 63] In United States Circuit Court of Appeals, Eighth Circuit, November Term, A. D. 1942

No. 12340

County of Mahnomen, a municipal corporation, Appellant,

vs.

United States of America, Appellee

Appeal from the District Court of the United States for the District of Minnesota

No. 12376

November Term, A. D. 1942

United States of America, Appellant,

vs.

State of Minnesota, et al., Appellees

Appeal from the District Court of the United States for the District of Minnesota

Opinion—December 7, 1942

Mr. L. A. Wilson, County Attorney, and Mr. George B. Sjoselius, Assistant Attorney General (Mr. J. A. A. Burnquist, Attorney General, was with them on the brief) for County of Mahnomen and State of Minnesota, et al.

[fol. 64] Mr. Vernon L. Wilkinson, Attorney, Department of Justice (Mr. Norman M. Littell, Assistant Attorney General, and Mr. C. U. Landrum, Special Assistant to the United States Attorney, were with him on the brief) for United States of America.

Before Gardner, Woodrough and Thomas, Circuit Judges

Woodrough, Circuit Judge, delivered the opinion of the court.

This suit was brought by the United States to carry out a trust obligation undertaken by it in respect to a tract of land which it allotted in severalty and conveyed by trust patent to Isabelle Garden, who is an adult female mixed-

blood Chippewa Indian of the White Earth Reservation, in Mahnomen County, Minnesota. One of the obligations assumed by the United States under the terms of its trust was that it would turn over the land to the Indian at the termination of the twenty-five year trust period "free of all charge or incumbrance", and the gist of the complaint filed by the United States was that the defendant Mahnomen County prevented the United States from completely discharging its trust by wrongfully assessing taxes against the land during the period of the trust and collecting the same from the Indian. It asked for judgment against the County for the amount of the tax money so obtained, and interest. The trial court awarded judgment as prayed for the tax money collected by the County after the period had expired.

The County appeals, claiming that the United States was not entitled to any recovery; and the United States appeals, claiming that recovery should have been awarded [fol. 65] for all the tax money collected by the County from the Indian.

It appears that the trust patent describing the land as parcel 7 was issued December 13, 1902, pursuant to the General Allotment Act of 1887 (24 Stat. 388) and the Nelson Act of 1889 (25 Stat. 642), and provided that the United States would hold the land in trust for a period of twenty-five years, and then would convey it to the allot-ee in fee "discharged of said trust and free of all charge or incumbrance whatsoever." Thereafter the two Clapp Amendments of 1906 (34 Stat. 353) and 1907 (34 Stat. 1034) were passed, the relevant provisions of the first, as amended by the second, reading as follows:

"That all restrictions as to sale, encumbrance or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments."

Isabelle Garden became an adult in 1911 and entitled under the foregoing provisions to apply for a patent in fee simple for her allotment, but she made no such applica-

tion, and the twenty-five year period specified in her trust patent expired in 1928.

Beginning in 1911 the County assessed taxes against the land each year and the Indian paid the same currently except that the taxes for 1922 and 1927 were permitted to become delinquent and the Indian did not redeem until June 30, 1936, when she purchased Tax Assignment Certificates therefor, as then permitted by the Minnesota law. This suit was begun by the United States in 1940.

It has been settled by long course of adjudication that State and County authorities may not lawfully tax Indian [fol. 66] lands while the United States holds them in trust under promise to convey to the Indian at the expiration of the trust period free of incumbrance. The federal power is supreme in this field and no State power of taxation can lawfully be exercised to create liens upon the land which the United States has undertaken to keep and convey free of liens. *In re Kansas Indians*, 72 U. S. 737; *In re New York Indians*, 72 U. S. 761; *United States* v. *Rickert*, 188 U. S. 432; *Board of Commissioners of County of Jackson, Kansas* v. *United States*, 308 U. S. 343; *McCurdy* v. *United States*, 264 U. S. 484; *Carpenter* v. *Shaw*, 280 U. S. 363; *Morrow* v. *United States*, 8 Cir., 243 F. 854; *United States* v. *Benewah County, Idaho*, 9 Cir., 290 F. 628; *United States* v. *Nez Perce County, Idaho*, 9 Cir., 95 F. 2d 232; *United States* v. *Lewis County, Idaho*, 9 Cir., 95 F 2d 236; *Board of Commissioners of Caddo County, Oklahoma*, v. *United States*, 10 Cir., 87 F. 2d 55. It is also settled that Congress itself may not by legislative fiat deprive the Indian of the tax exemption inuring to him under the obligation to convey to him free of incumbrance. It is held that he has a vested right to the exemption. *Choate* v. *Trapp*, 224 U. S. 665; *Carpenter* v. *Shaw*, 280 U. S. 363; *United States* v. *Benewah County, Idaho*, 9 Cir., 290 F. 628; *Morrow* v. *United States*, 8 Cir., 243 F. 854; *United States* v. *Spaeth*, 24 F. Supp. 465; *Glacier County, Montana*, v. *United States*, 9 Cir., 99 F. 2d 733. It appears that in 1919 a patent in fee for the lands in question was issued to the Indian Isabelle Garden, but the same was not applied for by her and so was not issued in conformity with, or as authorized by the provisions of the Clapp Amendments, supra. The United States therefore remained obligated to perform the trust defined in the original patent, and the County recognizing such "sovereign power and authority over • • • parcel 7 • • • for the period of twenty-five years from and after the date

of issuance of the trust patents" stipulated in the court [fol. 67] below that "said land [parcel 7] was not legally taxable prior to the year 1928." In the strict and diligent performance of its trust, the United States should have applied to its courts for decree or decrees avoiding the apparent liens of taxes illegally assessed by the County against the land each year from 1911 up to 1928, or for injunction, but time does not run against the sovereign and its right to resort to its courts in aid of the performance of governmental obligation is not restricted to any particular form of action. Recovery for the Indian of the money obtained by taxation illegally imposed also accomplishes the performance by the government o. its trust and it is well settled that that remedy is equally available to it in its courts. *Board of Commissioners of County of Jackson, Kansas*, v. *United States*, 308 U. S. 343; *Bryan County, Oklahoma*, v. *United States*, 10 Cir., 123 F. 2d 782; *United States* v. *Chehalis County*, 217 F. 281; *Board of Commissioners of Caddo County, Oklahoma*, v. *United States*, 10 Cir., 87 F. 2d 55; *United States* v. *Nez Perce County, Idaho*, 9 Cir., 95 F. 2d 236; *Glacier County, Montana*, v. *United States*, 9 Cir., 99 F. 2d 733.

The County appears not to question the law or the right of the government to sue in its courts as above stated. It contends that a suit which Isabelle Garden brought against it in the state court in 1923 to recover taxes wrongfully assessed against her land and paid by her ought to be deemed a bar to this action. That action was adjudicated against her on demurrer to her petition but the United States was not a party to the action. But the interest which the United States has to see to it that its trust obligation is performed is invested in it as a sovereign and that interest cannot be impaired by a judgment in any proceeding to which it was not a party. The state judgment was therefore not a bar to this action. *Bowling and Miami* [fol. 68] *Investment Co.* v. *United States*, 233 U. S. 528; *United States* v. *Candelaria*, 271 U. S. 432; *Bryan County, Oklahoma*, v. *United States*, 10 Cir., 123 F. 2d 782. The County also contends that it should be held that the tax payments which it obtained from Isabelle Garden were voluntary payments and it is presented that under Minnesota law the taxpayer may not recover such voluntary payments of taxes by action in the courts of Minnesota. In this connection stress is laid upon the extent to which the Clapp

Amendments operated to emancipate the adult mixed-blood Indians to whom it related, and it is argued that they became in effect sui juris and therefore subject to all the consequences of their acts applicable to others in the state. If others are deemed to waive all objection to illegal taxes by voluntarily paying the same, so it is said should the Indians.

The argument would not be considered without force if the case was of first impression. In the matter of the alienation of lands conveyed by trust patent it is settled that if the Indian acts to apply for fee patent before expiration of the trust period and his application is granted and he obtains the fee and alienates it, then the obligation of the government is deemed to have been discharged. *United States* v. *Waller*, 243 U. S. 452; *Williams* v. *Johnson*, 239 U. S. 414; *United States* v. *Spaeth*, 24 F. Supp. 465. But in the matter of the exemption of the land from taxation the course of judicial decision has consistently denied the power of the states or their agencies to impair the obligation of the United States to perform that provision of its trust agreement by which it has undertaken to make its conveyance free of such incumbrance. *Choate* v. *Trapp*, 224 U. S. 665; *Board of Commissioners of Caddo County, Oklahoma*, v. *United States*, 10 Cir., 87 F. 2d 55; *Morrow* v. *United States*, 8 Cir., 243 F. 854; *Glacier County, Montana*, v. *United States*, 9 Cir., 99 F. 2d 733.

[fol. 69] The trial court erroneously took the position that the United States could not recover taxes paid after the expiration of the trust period upon levies made prior to that date for the reason that those payments were voluntarily made by an emancipated Indian. The duty of the United States to see that its guaranty of tax immunity is respected was a continuing one. The fact that the taxes wrongfully levied between 1922 and 1927 were not discharged until 1936 is immaterial. Any taxes which were assessed prior to 1928 and which the allot-ee had to discharge then or thereafter in order to obtain an unencumbered title were impingements upon the allot-ee's vested tax exemption. The guaranty which he held of an unencumbered title in fee from the United States devolved upon that government the duty to remove that impingement. Once the duty was laid upon the government to preserve the land intact that duty must remain until performance. It was an obligation of protection against acts done within the designated period, and not merely of assistance within it.

We therefore order that the judgment of the District Court be affirmed in so far as it provides for recovery of taxes paid for the years 1911 to 1921, and be reversed in so far as it denies recovery of taxes paid for the years 1922 to 1925.[1]

[fol. 70] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 12340

COUNTY OF MAHNOMEN, a Municipal Corporation, Appellant,

vs.

UNITED STATES OF AMERICA

No. 12376

UNITED STATES OF AMERICA, Appellant,

vs.

STATE OF MINNESOTA; COUNTY OF MAHNOMEN, a Municipal Corporation; Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen, John Adams, as County Commissiones of Said County, and Their Successors in Office; John J. Spaeth, as Auditor of Said County and His Successors in Office; Adolph J. Paul, as Treasurer of Said County and His Successors in Office; Sigvold Tveit, as Register of Deeds of Said County and His Successors in Office; Camilla Hardy, as Clerk of Court of said County and Her Successors in Office, and Robert Pearson

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[1] Taxes for 1922 to 1925 were discharged by the purchase in 1936 of Tax Assignment Certificate No. 76. Taxes for the years 1926 to 1934 were similarly discharged in 1936 by the purchase of Tax Assignment Certificate No. 232. Since her allotment "was not legally taxable prior to the year 1928", the allot-ee should not have been required to pay the taxes for 1926 and 1927. But inasmuch as the taxes for 1928 to 1934 (which she was legally required to pay) exceeded the amount she actually paid for Tax Assignment Certificate No. 232 covering the years from 1926 to 1934, the United States makes no claim for any refund for the years 1926 and 1927.

JUDGMENT—December 7, 1942

Appeals from the District Court of the United States for the District of Minnesota

These causes came on to be heard on the transcripts of the record from the District Court of the United States for the District of Minnesota and were argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court, that the judgment of the said District Court in these causes be, and the same is hereby, affirmed insofar as it provides for recovery of taxes paid [fol. 71] for the years 1911 to 1921, inclusive, and that said judgment be, and the same is hereby, reversed insofar as it denies recovery of taxes paid for the years 1922 to 1925, inclusive.

And it is further Ordered by this Court that no costs be taxed in favor of either of the parties in this Court, and that these causes, be, and they are hereby, remanded to the said District Court for further proceedings consistent with the opinion of this Court this day filed herein.

December 7, 1942.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF ISSUANCE OF MANDATE—Filed December 19, 1942

To the Honorable, The United States Circuit Court of Appeals, Eighth Circuit:

The County of Mahnomen, appellant and appellee respectively in the above entitled actions, intends to file with the Supreme Court of the United States a petition for a writ of certiorari requesting that court to review the decision of this court in both of the above entitled actions. The petition will be filed promptly after the entry of judgment in this court.

Wherefore the County of Mahnomen respectfully applies to this court for an order staying the mandate and execution and enforcement of the judgment herein until the petition for a writ of certiorari has been acted upon by the Supreme [fol. 72] Court of the United States, and if the writ be granted, further staying the mandate and the execution and

enforcement of the judgment herein until the above entitled actions have been finally disposed of by the Supreme Court of the United States.

Dated at St. Paul, Minnesota, this 17th day of December, 1942.

J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Assistant Attorney General, 102 State Capital, St. Paul, Minnesota; L. A. Wilson, County Attorney, Mahnomen County, Mahnomen, Minnesota, Attorneys for Appellant.

[File endorsement omitted.]

In United States Circuit Court of Appeals

Order Staying Issuance of Mandate—December 31, 1942

November Term, 1942

Thursday, December 31, 1942.

On Consideration of the motion of the County of Mahnomen for a stay of the mandate in the above causes pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here Ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is [fol. 73] filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of these cases by the Supreme Court.

December 31, 1942.

[fol. 74] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 75] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed March 15, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.